Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF TACOMA AND SEATTLE, AND KING COUNTY WASHINGTON, AND THE COLORADO MUNICIPAL LEAGUE

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SUMMARY

The Greater Metro Telecommunications Consortium, the Rainier Communications Commission, the Cities of Seattle and Tacoma, Washington, King County, Washington and the Colorado Municipal League collectively represent the interests of local governments that are home to approximately seven million people. These local government interests range from large and dense urban areas to extremely small, remote rural areas, and almost every other kind of community.

The information provided by these Local Governments indicates that the regulatory process works relatively well. Information about land use and rights-of-way requirements and permit fees are readily available. Local governments have worked creatively to address unique issues, and many have reached out to the communications industry to assist in revisions to local regulations. These local and regional activities have been successful at bringing the parties together to gain a better understanding of each other's legitimate interests, although it not apparent that there has been significant, measurable increase in broadband deployment as a result. It is clear from the experiences of these Local Governments that Commission actions have not had an impact on increasing the amount of broadband deployment in these communities.

The Local Governments believe the Commission can play a positive role as a facilitator, although it must make a commitment to treat all parties as equals, and respect the longstanding efforts of localities to promote broadband deployment. The Local Governments do not believe that the Commission has the legal authority to take regulatory action to limit or preempt local land use or rights-of-way authority in connection with broadband deployment issues, and supports the arguments made by our national associations in their Comments to the NOI.

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These Comments are filed by the Greater Metro Telecommunications Consortium ("GMTC"), the Rainier Communications Commission ("RCC"), the cities of Tacoma and Seattle, Washington ("Tacoma" and "Seattle"), King County, Washington ("the County"), and the Colorado Municipal League ("CML") (and collectively referred to as "the Local Governments"), in response to the Notice of Inquiry ("NOI"), released April 7, 2011, in the above-entitled proceeding.

I. INTRODUCTION

A. Background on the Local Governments

GMTC is an intergovernmental entity formed under Colorado law, comprising the City and County of Denver and 32 other Colorado municipalities and counties.[1] GMTC communities

[1] The members of GMTC are Adams County, Commerce City, Federal Heights, Arapahoe County, Cherry Hills Village, Columbine Valley, Englewood, Glendale, Greenwood Village, Sheridan, Centennial, Louisville, Denver, Castle Rock, Dacono, Durango, Frederick, Parker, Lone Tree, Edgewater, Golden, Jefferson County, Lakewood, Wheat Ridge, Arvada, Aurora, Brighton, Broomfield, Erie, Littleton, Westminster, Northglenn and Thornton.

extend from the plains east of Denver to the foothills at the base of the Rocky Mountains, and also includes the City of Durango, located in Southwestern Colorado. These jurisdictions comprise an area of approximately 650 square miles, and represent a population of approximately 2.3 million people. The mission of GMTC is to represent its member governments in promoting the public's interest in all matters of concern related to telecommunications through collaboration, education and advocacy. A number of GMTC members provided information for these Comments, and are briefly described in Section II, *infra*.

RCC is an intergovernmental entity formed under Washington law, comprising Pierce County and 13 municipalities located within the County.[2] Mount Rainier is located in the eastern part of Pierce County. To the west, the County includes the Port of Tacoma, and the Narrows Bridge spanning Puget Sound, connecting County residents on the Washington Peninsula. RCC jurisdictions comprise an area of approximately 1,680 square miles, and represent a population of approximately 805,400 people. The RCC has existed since 1992 as an advisory body on matters relating to telecommunication for Pierce County and most of the Cities and Towns in the County. A number of RCC members provided information for these Comments, and are briefly described in Section II, *infra*.

The City of Seattle, Washington has approximately 600,000 inhabitants on 84 square miles. A number of Seattle's distinct neighborhoods are single family residential. However, much of the population is concentrated in dense urban neighborhoods of apartment buildings and condominiums in the downtown area, around the University of Washington, and in other urban centers. Seattle's median annual household income is approximately $60,000. Seattle has several lakes and borders two large bodies of water: Puget Sound on the West and Lake Washington on

[2] The members of RCC are Bonney Lake, Carbonado, DuPont, Fife, Milton, Orting, Pierce County, Puyallup, Ruston, Steilacoom, Sumner, Tacoma, University Place and Wilkeson.

the East. Total water body area within Seattle is 3.42 square miles. Seattle owns its municipal electric, sewer and water utilities. The City has several departments involved in the granting of permits and access to the rights of way that are referenced in these Comments. They include: Seattle City Light ("SCL"), Seattle Department of Transportation ("SDOT"), Seattle Public Utilities ("SPU"), the Department of Planning and Development and ("DPD") and the Department of Finance and Administrative Services ("FAS").

The City of Tacoma, Washington is located on the south end of Puget Sound, and is home to the sixth largest container port in North America. Named one of America's most livable communities, Tacoma is comprised of approximately 49 square miles and has a population of almost 200,000.

Located on Puget Sound in Washington State, and covering 2,134 square miles, King County is nearly twice as large as the average county in the United States. With more than 1.9 million people, it also ranks as the 14th most populous county in the nation.

CML is a nonprofit, nonpartisan organization that has served and represented Colorado's cities and towns since 1923. Currently, 265 of Colorado's 271 municipalities (representing more than 99 percent of the state's municipal population) are members of CML and benefit from CML's advocacy, information and training services. CML's mission is twofold: to represent cities and towns collectively in matters before the state and federal government, and to provide a wide range of information services to assist municipal officials in managing their governments. A number of CML member municipalities provided information for these Comments, and are briefly described in Section II, *infra*.

B. Concern About the NOI's Underlying Premise

The Local Governments are concerned about the underlying premise of the NOI, namely,

that local and state government rights-of-way ("ROW") practices and wireless facilities siting regulations play a significant and sometimes negative role in deployment of broadband facilities. In these Comments, the Local Governments will describe their own practices and experiences, as well as point to information and actions from the Commission itself, which demonstrate that ROW and facilities siting practices do not inhibit the deployment of broadband infrastructure. These Comments will suggest how the Commission can increase both its effectiveness and its credibility in supporting ongoing local government efforts to expand broadband to all parts of our Nation.

C. The Local Governments Support the Comments of our National Associations

The Local Governments are also familiar with the joint Comments being filed by the national associations in which many of our jurisdictions are members. Rather than restate the big picture policy analysis and the comprehensive legal arguments that are being addressed in the Comments of the National Association of Telecommunications Officers and Advisors, National League of Cities, National Association of Counties, United States Conference of Mayors, Government Finance Officers Association, International Municipal Lawyers Association, American Public Works Association and the International City Managers Association (the "National Association Comments"), we advise the Commission here that we join in the assertions and suggestions of the National Associations' Comments.

II. TIMELINESS AND EASE OF PERMITTING PROCESS

The Commission has asked a number of questions related to the timeliness and ease of the permitting process. The issues include whether ROW and facilities siting information is readily accessible, and how specific kinds of ROW and facilities siting issues impact various categories of ROW owners, facilities siting authorities, network users or network functions.

The Commission has also asked for descriptions of best practices in these areas.[3]

A. Examples of the Local Governments' Processes

The Town of Steilacoom, Washington serves as a good example of how the Local Governments address the siting of wireless communications facilities. Steilacoom is the first incorporated town in the State of Washington and is located on the southern shores of the Puget Sound. It has a population of approximately 6,000. Steilacoom has a comprehensive telecommunications ordinance that governs the siting of towers and antennas. It's regulations, codified as Chapter 18.22 of the Steilacoom Municipal Code, is available on line at http://www.townofsteilacoom.com/town_offices/pdf/steilacoom_municipal_code.pdf. Application information is also available on the Town's website, The application information is easily available on the Town's website www.townofsteilacoom.org.

The City of Louisville, Colorado, is located approximately 25 miles northwest of Denver with a population of approximately 18,000 residents and 8 square miles. Like many Colorado jurisdictions, the land use and rights-of-way code provisions are on line. *See*, Louisville Municipal Code (section 17.42) available via www.LouisvilleCO.gov; Information on fees is accessible at www.LouisvilleCO.gov/Portals/0/Planning/developmentreviewfees.pdf.

University Place, Washington is a city of 31,500 located on the Puget Sound, south and west of Tacoma. It is served by three large telecommunications providers – Qwest (now CenturyLink), Comcast and Click, and several small companies. Personal wireless services are provided by at least six companies. ROW permit requirements and applications are available online and completed applications are typically faxed to the City offices. Applicants with

[3]In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting, WC Docket No. 11-59 ("NOI"), at para. 14.

multiple permits usually open an account with the City, and are billed monthly for permit fees. University Place has a positive relationship with its telecommunications providers. It has a quick permit turnaround time, provides on-call inspections, allows for emergency work prior to permitting, and after-hour and weekend work with prior notification. A description of the ROW permits issued to Qwest, Comcast and Click between 2008 and 2010 is attached to these Comments as Exhibit A.

The City of Bonney Lake, Washington is a fast-growing City that has nearly doubled its population in the last decade, located next to Lake Tapps on a ridge overlooking the Puyallup Valley. Bonney Lake's wireless regulations, which are contained in Chapter 18.50 of its municipal code, are readily available on line. *See*, http://www.codepublishing.com/wa/bonneylake/.

DuPont, Washington is located in Pierce County City on the shores of the south Puget Sound, nestled in between portions of Joint Base Lewis-McChord for the U.S. Army and Air Force. It has a population of approximately 8,500 people. The City's municipal code, permit applications and additional information is available on the City's website at www.ci.dupont.wa.us.[4]

Arapahoe County, Colorado is located on the south side of the Denver metropolitan area. The County is home to approximately 544,000 residents, but its wireless facilities regulations serve only the unincorporated areas of Arapahoe County (a population of approximately 75,000). At 12 miles North-South and 72 miles East-West, Arapahoe County covers approximately 800 square miles and includes a number of incorporated cities in the western county and agricultural

[4] DuPont is currently in the process of converting its website and URL, anticipated to be completed by the end of 2011. The City's new website address will later be accessed at www.cityofdupontwa.org.

lands, incorporated towns and unincorporated communities in the rural eastern area. At the time of filing these Comments, Arapahoe County is in the process of making significant revisions to its land use code addressing wireless communications facilities. The current code provisions are available on line at http://www.co.arapahoe.co.us/Departments/PW/Planning/Land%20Development%20Code/12-1100.pdf . The revised code will be available online after final adoption. Current permit forms are available online at http://www.co.arapahoe.co.us/Departments/PW/Planning/Forms/LandDevApp/CMRS%20APPLICATION%20%20ADMIN%20REVIEW%20PROCESS%20Form%20July%202010.pdf. Arapahoe County's Street Cut and ROW fees can also be found on the County website: http://www.co.arapahoe.co.us/Departments/PW/Engineering/Documents/2009_PERMIT_FEES_reformatted.pdf.

The City of Centennial, Colorado is located south of Denver, is comprised of approximately 28 square miles, and has a population of about 100,000. The City's application form for wireless facilities siting is available on the City's website, which discusses both substantive requirements and fees. The City's Land Development Code includes a matrix that states whether a particular wireless facilities use is permitted, not permitted, or if a previously approved planned unit development (PUD) must be amended to permit the use. The website is: http://www.centennialcolorado.com/index.aspx?nid=707. If a wireless use is permitted and no amendment to a PUD is required, the City provides for an administrative review. The City's ROW Permit Regulations, including the schedule of fees, are available on the City's website at http://centennialcolorado.com/DocumentView.aspx?DID=2113.

Cherry Hills Village, Colorado is an approximately 6.3 square mile suburb south of

Denver with a population of around 6,000. Cherry Hills includes predominately low density residential development and minimum levels of adequate wireless coverage has been challenging. This has raised concerns in the community about safety and the ability to do business in the City. The City has minimal commercial and no industrial zoning. The community's residents travel to other cities to work, although many expect and need to conduct work from home, necessitating better wireless coverage. About four years ago the City rewrote its zoning ordinance to promote the deployment of wireless facilities in the City. The regulations are available on line at http://www.cherryhillsvillage.com/wireless.aspx. This process will be described in more detail in Section VIII.A, *infra*.

The City of Craig, Colorado is located in the northwestern part of the state, is five square miles and has a population of approximately 9,250. Its building and land use codes, application forms and permit checklist are available on line at http://www.ci.craig.co.us/departments/building.

The City of Westminster, Colorado covers almost 34 square miles, with a population of approximately 109,000. It is located north and west of Denver. Westminster's regulations and application information is available on line at http://www.ci.westminster.co.us/files/TelecomApplication.pdf.

Lakewood, Colorado is located west of Denver. It covers approximately 43 square miles and has a population of about 143,000. Lakewood's zoning/permitting requirements are outlined in Section 17-2-3 of the City's Zoning Ordinance which is available online at www.lakewood.org/zoning. Lakewood's fees are adopted by resolution by its City Council. A copy of the fees currently in place is attached as Exhibit B.

Tacoma's wireless facilities siting regulations are available on line at line at http://www.govme.org/permitapplicationforms. Its ROW regulations and permit applications are also available on line:

http://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title02-Buildings.PDF
http://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title09-PublicWays.PDF
http://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title10-PublicWorks.PDF
http://www.cityoftacoma.org/Page.aspx?nid=153

Tacoma has its own electric utility, Tacoma Power. Its application forms for entities seeking to obtain utility service at wireless communications sites are available on line at http://www.mytpu.org/tacomapower/permitting.

Pierce County, Washington is the second most populous county in Washington with a population of approximately 800,000. There are 22 municipalities in Pierce County, including the county seat, Tacoma. The County covers over 1800 square miles, and includes Mount Rainier, the highest peak in the Cascade Mountains. Permit information is available on line at http://www.co.pierce.wa.us/cfapps/DCIS/mainpage.htm.

The Town of Breckenridge is a ski resort community located in Summit County, Colorado. It covers 5.5 square miles of mountainous terrain and has a full time population 4,540. The population swells during the winter and summer to approximately 38,000. Information on wireless siting and ROW regulations, application procedures and fees are available on line at www.townofbreckenridge.com.

The City of Longmont is located in eastern Boulder County, covers 22 square miles and has a population of approximately 86,000. Its residents are generally well educated and demand state of the art broadband services. Longmont's permitting application and requirements are available on line at http://www.ci.longmont.co.us/public_works/permits/useofstreets.htm and http://www.ci.longmont.co.us/public_works/permits/row.htm.

The Town of Frederick, Colorado is located approximately 26 miles north of Denver. It comprises 13.5 square miles and has a 26 square mile growth plan area. The population, according to the 2010 census, is 8679. Frederick's land use application requirements and fee schedules are available on line at http://www.frederickco.gov/uploadedFiles/Frederick/Permits_and_Forms/Planning/fee_schedule.pdf

Thornton, Colorado is located on the north side of the Denver metro area. It covers an area of approximately 30 square miles and has a population of approximately 120,000. Thornton's application and fee requirements are available on line at http://www.cityofthornton.net/Departments/CityDevelopment/Development/Pages/Development%20Applications.aspx.

The City and County of Broomfield, Colorado covers almost 34 square miles, and is located north and west of Denver. The estimated population per the Census in 2010 was 55,889 persons. Broomfield's ROW fee schedules are available on line at http://www.broomfield.org/engineering/Forms-Documents/PPIP%20-%20Final%20Style%20Sheet%20for%20Web%20&%20distribution%202-25-11.pdf. Its application requirements and forms are available at http://www.colocode.com/broomfield/title17.htm#chapter17_35.

Commerce City, Colorado is located in the rapidly growing Denver-metro area, northeast of Denver in Adams County. It is surrounded by several wildlife parks (Barr Lake State Park to the north and the Rocky Mountain Arsenal National Wildlife Refuge to the east), and the Denver International Airport (DIA). Commerce City is home to approximately 42,500 people and occupies nearly 41-square miles. Additional land for growth, contained within the City's urban

growth boundaries, will expand the size of the City to almost 62-square miles. Commerce City is also located along major regional travel routes roadways (I-76, I-270, and E-470), railways (Burlington Northern/Santa Fe and Union Pacific), and air (Denver International Airport)), which has helped to retain a strong industrial base for the local economy. The City's regulations, fees and application information for wireless facilities and ROW are available on line at

- *Telecommunications Facts-to-Know:* http://www.c3gov.com/Departments/Community Development/Planning/Land Development Process/FTK for Telecommunications Facilities
- *Building Permit Application:* http://www.c3gov.com/Departments/Community Development/Building Safety/Building Permit Application
- *Uses-by-Permit:* http://www.c3gov.com Departments/Community Development/Planning/Land Development Process/FTK for Uses-by-Permit

Seattle's application processes are straightforward and information is provided on the respective websites of the departments and other means. All information on applicable regulations, applications and fees are available on line.

- *For ROW Management Overview*: http://www.seattle.gov/transportation/rowm.htm
- *Street Use Permits*: http://www.seattle.gov/transportation/stuse_home.htm; and http://www.seattle.gov/transportation/stuse_permitlist.htm
- *Utility Coordination in City Streets*: http://www.seattle.gov/transportation/pactutility.htm

The City and County of Denver is Colorado's capitol city. It is the 19th largest city in the nation, covering 153 square miles, with a population of approximately 610,000. Denver is a founding member of the GMTC, so it is appropriate that Denver be mentioned in the Local Government Comments. However, Denver is planning to file its own Comments in this proceeding, and we request that the Commission review those Comments for a complete understanding of Denver's positions. Denver's permitting requirements and applications (including fees) are available on line at www.denvergov.org/pwpermits. Land use regulations and applications are available at

www.denvergov.org/cpd/zoning/zoningcodemapwhatsmyzoning/tabid/432507/default.aspx.

B. The Tower Siting Shot Clock Ruling Has Had Insignificant Impact on Broadband Deployment

The Commission seeks information regarding the impact of its tower siting shot clock ruling in November 2009.[5] The Commission has asked whether the shot clock ruling reduced the number of collocations pending before state and local government authorities for periods of longer than 90 days, and the number of applications other than collocations pending for longer than 150 days. Generally, prior to the shot clock order, the vast majority of siting applications to the Local Governments were not pending longer than 90 days for collocations and 150 days for new facilities. This is still the case today.

1. Specific Impacts in the Local Governments

The shot clock ruling has had no effect in Steilacoom. Applications were and continue to be reviewed and acted upon in a timely manner. Likewise, Louisville had the same number of applications (2) in both the years prior and subsequent to the shot clock order. There has been no change in the process or the timing for handling these land use requests.

University Place maintains a good relationship with providers of wireless communications services. It has issued permits for towers in both residential and commercial zones. The City has not denied any applications for wireless telecommunications facilities.

Bonney Lake has had a positive relationship with wireless providers, although it has had *no applications* for any wireless communications facilities since November 2009. The shot clock ruling has had no impact on deployment in Bonney Lake.

In the year prior to November 2009 Arapahoe County had three siting applications, two of which were collocations. In the year subsequent to November 2009 the County had sixteen

[5] NOI at para. 13.

applications, nine of which were collocations. The average time to process applications actually increased from 2009 to 2010 by about 15-20 days, although final decisions were still made within the shot clock parameters. The increase in time to process applications stemmed mostly from the post-referral comments made by other agencies and interested parties (such as utility companies), and increased input sought by the public. It is fair to say that the shot ruling has had no effect on Arapahoe County.

The shot clock ruling has had no effect in Cherry Hills Village. Over the past few years Cherry Hills Village has seen seven applications for wireless facilities, one of which was for DAS facilities in multiple locations. All of the applications involved either collocations or camouflaged sites. While most applications that do not involve new, stand alone facilities can be processed fairly quickly, both prior to and after the shot clock ruling there have been some applications that have taken 4 – 6 months to reach final decision. In each case, the most significant amount of time for each application has been waiting for the applicant to provide supplemental information clearly required by the application process, or time necessary to re-do required items, such as notifying adjacent residents of the application. After final information is provided to City staff, a final decision is made or public hearing (if required by the code) is scheduled, usually within two to three weeks.

Wheat Ridge, Colorado is an inner ring suburb of 9.5 square miles, located west of Denver, with a population of approximately 31,200 people. Wheat Ridge has had only one application for a wireless facility between November 2009 and December 2010. The shot clock ruling has had no impact on Wheat Ridge.

Westminster had four siting applications in the year prior to the shot clock ruling and 14 in the year after. All but two were for collocations. Westminster reports some difficulty in

attempting to comply with the shot clock ruling's dictates, primarily due to slow turn around time when the City seeks supplemental information from the applicant.

Lakewood has received 33 applications for wireless facilities between November 2008 and December 2010. Of those, 27 were for collocations and six were for new facilities. There has been no significant change in the time period generally taken by the City to process applications, either prior or subsequent to the shot clock ruling. In either case, applications are generally acted upon in approximately 40 days.

Centennial received 12 applications in the year prior to the shot clock ruling (nine collocations and three new facilities) and 21 applications in the year subsequent to the ruling (14 collocations and seven new facilities). The average time period from the receipt of a complete application to final decision was 32.8 days prior to the shot clock ruling and 27.6 days after the ruling. The City does not believe that this small reduction in average time had anything to do with the shot clock ruling. Rather, Centennial began using project tracking software in 2010 for all land use applications. This software enables the Community Development Department to track active land development applications and institute review deadlines. The reduction in the average review times can most likely be attributed to the use of project tracking software.

Tacoma reports that it strives to issue decisions, relative to discretionary land use permits for wireless facilities within 120 days. When a decision cannot be rendered within 120 days, the City notifies the applicant in advance and seeks agreement on additional time. The City's ability to issue a land use permit within this time period has more to do with case load and staffing and less to do with state and/or federal regulations. The City has never received a complaint from a wireless applicant relative to the time it takes to issue a discretionary permit. When issuance of a permit has been delayed it was generally due to the amount of public input and the need to

address community concerns.

The shot clock ruling has had no impact in Breckenridge. In the year prior to the shot clock ruling there was one application; in the year after there were three applications.

Longmont saw four applications for collocations in the year prior to the shot clock ruling and 13 applications in the year after. The increase is not related to the shot clock ruling, as the general time period in which applications are acted upon has not changed.

Thornton had one application for collocation in the year prior to the shot clock ruling and has 13 applications for collocations and three for new facilities in the year after the ruling. Thornton does not believe the shot clock ruling has had any impact on the City. It's time periods for acting upon completed applications has always been reasonable and has not changed.

Broomfield saw an increase in applications for wireless facilities from four in the year prior to the shot clock ruling to ten in the year after. However, the shot clock ruling has had no effect on Broomfield's practices. Applications were addressed in a timely manner both before and after the shot clock ruling.

The shot clock ruling has had no impact in Frederick. It has had *no applications* for siting of facilities in the years prior and subsequent to the Commission's order.

Commerce City saw a decrease in applications for wireless facilities from four in the year prior to the shot clock ruling to three in the year after. The City's processes and time frames for approval have not changed.

Prior to the shot clock ruling DuPont had approved four permits for wireless facilities – two for new facilities and two collocations. The City has received *no applications* for any wireless facilities since the shot clock ruling, making it obvious that the shot clock ruling has had no impact on deployment in DuPont.

In Seattle, initial review of applications for wireless antenna siting is completed within six weeks of application. If corrections are needed the application is returned to the applicant. Once the application is corrected and resubmitted, review is completed within two to three weeks. If no further corrections are needed, the goal is to make a decision within five additional weeks. Seattle's regulations provide that any application to fill a 'significant gap' in coverage, qualify for expedited approval, without review for a conditional use permit.

None of the Local Governments have been challenged in court for alleged failure to act within the time periods set forth in the shot clock ruling. In fact, none of these jurisdictions have been threatened to act more quickly or face the possibility of a shot clock lawsuit.

The Commission asks whether parties believe that adoption of the shot clock ruling has resulted in faster rulings from state and local government authorities.[6] Our response is 'no.' Our experience indicates that decisions on complete applications were made timely prior to the shot clock ruling and continue to be made timely today.

2. The Shot Clock Ruling Has Increased Local Government Costs

The experiences of the Local Governments lead to two significant conclusions. First, prior to the shot clock ruling, applications for wireless communications facilities were routinely granted in a reasonable period of time after receipt of a complete application[7], and subsequent to the shot clock order, our effective and efficient processing of these applications has continued.

It would be easy – but wrong – for the Commission to conclude that since the Local Governments appear to be able to complete most siting applications within the time periods set

[6] NOI at para. 13.

[7] The fact that there were no significant local regulatory problems causing delay in deployment prior to the shot clock ruling was identified in the Comments and Reply Comments filed by GMTC, RCC and others in WT 08-165 in 2008. Those Comments and Reply Comments are attached hereto as Exhibits C and D.

forth in the shot clock ruling, that such ruling was proper. The Commission's purpose however, was to impose time limits for local government action, *in order to spur broadband deployment*. Most of the Local Governments have not seen significant increase in wireless facilities deployment when comparing the number of applications prior and subsequent to the shot clock ruling. For those that have seen an increase, there is no evidence indicating that siting applications are being submitted in greater numbers, in response to the Commission's action in the shot clock ruling.

To be sure, after the shot clock ruling, each of the Local Governments took the time and incurred costs to review their local regulatory processes and made adjustments where necessary, in order to maximize the ability to comply with the shot clock. Many are now stricter in their interpretation of what constitutes a "complete" application, in order to ensure that the shot clock does not begin to run until the application is complete. Therefore, the Local Governments can say with great confidence that the shot clock ruling has caused costs to be imposed on local taxpayers, without any demonstrable increase in broadband deployment.

III. THE APPLICATION PROCESS

A. On Line Information and Staff Availability are Readily Available to Applicants

As specifically noted in Section II.A, *supra*, most of these Local Governments' municipal and county code provisions regarding ROW permitting and the siting of wireless communications facilities are available on line. Applicants also have the opportunity to meet with planning staff to review its proposed use and receive guidance on the application and evaluation process. The Local Governments providing information for these Comments report that their staffs regularly assist applicants in addressing local requirements either on line, by telephone or in person at the municipality's or county's offices.

B. Individual Community Information About Applications and the Process for Approval

Cherry Hills Village has an administrative approval option with no public meetings or hearings for facilities located on existing or replacement utility poles in the ROW. A ROW use agreement is required, which must be approved by City Council at a public hearing, but once an agreement is approved, any facilities covered by the agreement can be installed. The City also has an administrative approval option for building mounted and alternative (camouflaged) facilities. An informal public input meeting (not a formal public hearing) must be held and notice is sent to adjacent property owners for facilities on private property or to property owners within 500 feet for facilities in the right-of-way. This meeting provides an informal setting for adjacent property owners to ask questions of the applicant and City staff. In the City's experience, members of the public rarely attend these meetings. When the public has attended, there has usually been only one neighbor who comes with a few questions, and is appreciative of the opportunity to have direct communications with the applicant to address their questions. If none of the noticed property owners request a conditional use hearing, the application can be approved administratively. The City has not experienced any occasion where a hearing has been requested.

Wheat Ridge application forms and regulatory requirements are available on the City's website at www.ci.wheatridge.co.us.

Tacoma is currently creating a new "tip sheet" to assist wireless providers with the application process. In the past the City has either provided copies of the applicable code sections or has provided a checklist. In addition to materials being available on line, the City provides over-the-counter service and scoping meetings to assist in the preparation of individual permit applications.

In Seattle, SCL co-owns (with CenturyLink) most utility poles in the City's ROW, and it controls the pole attachment permitting process. SCL has approximately 108,000 poles. The City's electric infrastructure is roughly 80% overhead and 20% underground. SCL recently completed a re-engineering of the pole attachment permit process to better facilitate access to poles by providers of broadband services. While there were some initial delays last year due to unforeseen workload, the process has dramatically improved cycle times. This year SCL has broken its own records for expedited permits. Significantly, even though SCL's workload is now greater than before; the cycle times have been dramatically reduced. SCL currently has 91 wireless antenna sites on its distribution poles in the ROW.

SCL's pole attachment regulations allow companies to self certify that they understand the National Electrical Safety Code ("NESC") and proceed to attach to City light poles along desired routes. To promote the attaching company's knowledge, understanding and compliance, the City provides NESC Rules and Clearances training upon request and at no charge. Issued permits are good for 90 days and extensions are routinely granted. There are three different types of attachment permits:

> Type 1: Companies can self certify that no make ready work is required on poles. In such cases permits are usually approved in 1 day (the requirement is 14 days) and pole attachments can be completed. If upon inspection SCL finds NESC violations they report results to the attaching company for correction of violations within clearance limits or draft a corrective work order for adjustment of electrical facilities.
>
> Type 2: Companies certify that make ready work is required on specific poles. SCL engineers identify specific issues and corrective action to provide at least minimum clearances. Make ready work completed in less than 45 days. SCL completes inspections of make ready work and attachment installation after both are complete.
>
> Type 3: There is a provision for small customer installations. Small attachments are limited to two applications per year and ten poles or less. SCL completes a field review of the entire route and completes any required make ready work prior to issuing a permit.

Regarding wireless facilities on SCL poles, since 2001 SCL has employed a full time person dedicated to wireless antenna siting on electrical distribution poles and transmission structures in the ROW. The person attends the Utilities Council annual conference – a consortium of utilities that promote collocation of telecommunications facilities. Attachments on poles over 60 feet must be reviewed by the Department of Planning and Development. Attachments on poles lower than 60 feet are first reviewed by DPD and a recommendation is provided to SCL.

SDOT allows annual vehicle permits for low impact work in the ROW, such as stringing fiber on poles. The permits are good for 8 hours per day and 2 hours per day on arterials. SDOT also holds monthly utility coordination meetings to alert companies to upcoming projects and provide opportunities for ROW coordination with scheduled work. Unfortunately the two largest incumbent providers (CenturyLink and Comcast) do not regularly attend monthly utility coordination meetings, and have chosen instead to rely upon the City's specific permitting process to schedule their work. This has resulted in inefficiencies in these companies' work and wasted City staff time in reeducating them on issues covered in the utility coordination meetings.

C. New or Novel Requests for ROW or Wireless Facilities Siting

The Commission has asked how ROW holders and wireless facilities siting authorities handle new or novel requests for access to ROW or tower and antenna sites.[8] Arapahoe County's Planning and Engineering Services Divisions and County Attorney's Office have worked extensively with the wireless industry over the last two years to address changing needs due to rapidly changing technology, capacity requirements, and installation types toward preparing a new wireless facilities regulatory code. New for the County with the anticipated adoption of the new wireless code provisions will be procedures for placement of wireless facilities within the

[8] NOI at para.14.

public ROW utilizing existing structures (or replacing existing structures) such as traffic signals (County-owned structures) and street lights (non-County, utility-owned structures). The County believes the proposed code addresses industry needs in these areas; an industry representative from AT&T Mobility spoke in support of the proposed code at the June 28, 2011 Planning Commission public hearing.

Broomfield faced a unique request involving site screening with Clearwire. An application for a roof mounted wireless facility required a new roof screen that was constructed around the wireless facility. The Broomfield Municipal Code addresses, and encourages, collocation on building walls or behind existing roof mounted screens, but it did not address a situation where a new screen would be constructed around a new roof-mounted facility. Clearwire's application was processed as a Use by Special Review and was approved by the City Council.

Seattle has addressed some unique ROW access issues as a result of its large bodies of water within the City limits. SPU owns 3 utility utilidors (underwater tunnels) that cross under the Lake Washington Ship Canal – a canal that connects Lake Washington to Lake Union to Puget Sound. The City has been allowing the placement of communications facilities within these utilidors since the early 1900s.

There are currently approximately 65 communications related conduits (and innerducts) located in these utilidors. SPU currently has agreements with 14 communications companies for the use of space within its utilidor tunnels. There is another utilidor jointly owned with King County that crosses the Duwamish waterway in the vicinity of the 1st Avenue South Bridge. This utilidor contains a trunk sewer main, a water transmission main, some conduits used by the Washington State Department of Transportation for traffic control devices, and communications

cable by Seattle and King County. SPU is currently working to create standard policy for the use of the tunnels. In addition to the utilidors, SPU has multiple agreements with CenturyLink (originally signed with Qwest) and Verizon for use of water transmission pipeline ROW.

The City of Arvada, Colorado is a first tier suburban community located northwest of Denver. It covers an area of approximately 36 square miles and has a population of approximately 108,000. Also known as the home of Colorado's first documented gold strike in 1850, Arvada has been very creative in working with wireless providers to site facilities in challenging locations. In March of 2001, Arvada entered into an agreement with Cricket to allow panel antennas to be placed on the iconic Water Tower in the City's Olde Town district. In keeping with Arvada's desire to minimize visual impacts, the antennas are located at the top of the legs and just below the catwalk surrounding the base of the water tank. Cricket worked with the City to ensure that its facilities design would be consistent with the desired design of the surrounding community space. Cricket also constructed an underground vault to house most of its equipment. In 2010, Clearwire collocated on the Olde Town Water Tower by adding antennas to the tower legs not occupied by Cricket, but in the same location underneath the catwalk.

In May 2003, Arvada entered into a lease agreement with T-Mobile (formerly VoiceStream PCS II Corporation) to construct a wireless site in the City's Long Lake Ranch Park – which includes approximately 400 acres of prime open space on the west side of the City near Colorado Highway 93. Concerned with the location and appearance of this facility, Arvada worked with T-Mobile to develop this site as a custom design on the hilltop to look like a picnic shelter along a City trail.

More recently, Arvada has worked with T-Mobile on a variety of options for a wireless site at the City's Westwoods Golf Course. There was initial approval for a design that would

allow a monopole within City ROW that mimicked the surrounding street lights and located the equipment downhill off the side of the road, adjacent to a golf cart underpass. However, the electric utility, Xcel Energy, would not approve this design.[9] Arvada and T-Mobile have explored other design options and have recently agreed to a final design that the City expects to be constructed in the near future.

While the City's electric utility has not been flexible with the Westwoods site, Xcel Energy has worked cooperatively with Arvada and Verizon Wireless on two other challenging sites. Verizon wanted to construct a site within a sensitive trail corridor just west of 52nd Avenue and Wadsworth Parkway. A compromise was worked out to allow Verizon to mount antennas on an Xcel tower and locate its equipment in a dual purpose structure designed to look like a train depot. This design fits with the design theme of the trail corridor and serves as a trail head/shelter for trail uses and as Verizon's equipment storage.

The parties are also in discussions on a design near the Arvada Reservoir and the City's Off Leash Dog Park. This facility will once again involve a dual purpose structure. The Verizon antennas will be mounted on the adjacent Xcel tower and the equipment will be located in a structure that also provides shelter for park users.

D. Most Local Governments Follow Streamlined Processes for Collocation

The Commission asks if the application process could be streamlined in certain situations, such as where an infrastructure provider seeks to collocate new facilities on an existing tower.[10] Westminster notes that collocation sites typically can be approved administratively, which is a

[9] This demonstrates another challenge when the siting of facilities requires cooperation from private, investor-owned utilities.
[10] NOI at 14.

shorter process than the public hearing process for new sites. Englewood,[11] Cherry Hills Village, Breckenridge, Frederick, Thornton, Broomfield and Tacoma (among others) have code provisions that eliminate any public hearing requirement and allow for administrative approval of applications to collocate on previously approved sites.

Arapahoe County reports that collocation on a structure where facilities already exist is typically an easier and shorter review, but not due to a specifically streamlined process. Assessment of impacts is less complex than with a new site, and setbacks, facility height and concealment are often already established with the original facility.

In Wheat Ridge, if an applicant is seeking to collocate or to attach facilities to the wall of a structure, there is a streamlined, building permit only application process. New roof mounts and free standing facilities follow the City's special use permit process.

In Steilacoom, collocation on existing towers and the use of existing buildings and structures such as utility poles and water tanks are favored for new facilities. Several sites for new towers have been located and ranked in preference order. Applications for new antennas are generally processed within 30-45 days.

E. Applicants are Most Often the Cause for Delay

The Commission asks about the factors responsible for delays, and whether there are types of errors, omissions, or substantive requirements in applications that frequently lead to rejection, dismissal, or return of the applications.[12]

The Local Governments are unanimous in their feedback which indicates that complete applications can typically be addressed without delay. However, applications are sometimes

[11] Englewood, Colorado is an inner ring suburb, located on the southern boundary of Denver. It is approximately six square miles in size and has a population of around 33,000.
[12] NOI at para. 14.

received with incorrect zoning determination by the applicant, incomplete information to address the review criteria established within the jurisdiction's land development code (such as setbacks and whether the proposed facilities comply with code requirements), missing photo-simulations, missing landscape plans.

Arapahoe County has had a number of experiences where the applications received have been replicated from applications made to other jurisdictions without sufficiently editing of the document. The County has on multiple occasions received plans indicating the facility is located within another county or within an incorporated city not within Arapahoe County's jurisdiction. Approximately two years ago, County Staff developed a checklist-type form for the applicant to fill in these details, and yet the information is still periodically found (on staff review) to be incorrect.

Cherry Hills Village typically reviews applications and revised applications in 2-3 weeks after receiving them and will either provide comments related to the completeness of, or errors in, the application or if the application is complete will provide a decision or schedule any required hearings. Delays beyond this are almost always due to the time taken by the applicants to address the errors and omissions. Applications have been received from a variety of companies, such as AT&T, Verizon, NewPath Networks (now Crown Castle) and Light Squared. The City finds that it is often dealing with independent contractors representing these providers, not the providers themselves. It is the City's experience that these contractors do not take the necessary time to review code requirements, which is the most common cause of delays.

Westminster indicates that incomplete applications are a common problem. Many companies have either a large amount of turn-over or changes in personnel which stalls the process. City planners often do not receive timely responses to telephone calls. Another major

problem is that permit runners and speculators are trying to find sites for wireless communications service providers (with and without their permission or direction) and do not understand the application and review process, business documents, what a coverage map should look like, how to find a property owner to comply with notifications requirements, and the like.

Despite the fact that all information is readily accessible on line, Westminster staff spends a significant amount of time (at the City's taxpayers' expense) helping inexperienced or unknowledgeable applicants understand process, application and related questions. Examples include not obtaining the property owner's signature on the application; an applicant's failure to follow instructions for completing the application; failure to provide required attachments; applicant/consultant did not follow or address staff's comments (usually these involve minor things like formatting, but it must be addressed in order for the county to accept the documentation for recording); the applicant's unreasonably long turn-around time for responding to comments. Due to the repeated and serious problems Westminster was having with incomplete applications, the City began requiring pre-submittal and submittal meetings to ensure the process would not be held up by missing items.

In Seattle's experience, the longest cause of delay in the wireless antenna permitting process is due to service providers putting little or no effort into addressing aesthetic considerations (usually relating to a requirement to screen antennas to be architecturally compatible with the buildings on which they are to be placed) or the hierarchy of placement, resulting in DPD having to seek application corrections. Another delay factor is service providers' failure the make payment for needed make ready work up front when they need to attach to SCL poles. Under Washington state law (State Accountancy Act) SCL *must* receive up front payment before performing services in order to avoid those services being deemed an

illegal gift of public funds.

Englewood, Centennial, Longmont, Denver, Commerce City, Dupont and Broomfield also note that the applicant's incomplete applications/submittals, and failure of applicants to follow up with timely responses to requests for information necessary to process applications are primary causes for delay. Centennial notes that its application requires the property owner to consent to the submittal of a wireless application to the City by its tenant or tenant's representative. This requirement may be met through a signature on the application form, a separate letter, or by demonstration of an executed lease agreement. It is common for applicants to omit this information. As another example, the site plan may include inconsistent or inaccurate information that the City has asked to be corrected prior to approval of the wireless permit. Longmont has had particular problems with Clearwire and Open Range Communications causing delay by failing to secure the required signatures from either the mortgagee or the property owner on the application documents, causing the applications to be rejected as incomplete.

The unique Clearwire application for a new roof mounted screen in Broomfield mentioned in Section III.C *supra*, took eight months (March – November 2010) from original submission to final approval. The factors causing the delay were:

1. Multiple reviews by staff were required because the initial application was incomplete and subsequent reviews had missing information or did not address staff concerns.

2. The applicant changed its subcontractor/representative in May of 2010 prior to a resubmittal of the revised application. To accommodate the applicant, the plan was resubmitted on May 20, 2010 and was scheduled for a public hearing on June 14, 2010 even though minor technical issues remained.

3. The plans were not revised and resubmitted to Broomfield to address the minor technical issues staff had previously identified, and the conditions requested in the Planning Commission's recommendation for approval until the end of July 2010.

4. The applicant's subcontractor/representative was changed a second time prior to final hearing. Plans were not complete (all comments addressed and final copies provided) until November of 2010.

F. Improving Industry Training Practices will Lead to Faster Processing Timeframes

The Commission seeks suggestions on particular practices that can improve processing time frames.[13] Based upon the information received from the Local Governments in preparation for these Comments, it appears that one action that should be taken by the industry is to better train their representatives who are responsible for submitting applications and interacting with Local Government staff. Minimizing the problems resulting from incomplete applications and failure to respond to local government requests for information as described in subsection III.E above will shorten the time frame necessary to reach a final decision on applications.

IV. REASONABLENESS OF CHARGES

In the NOI, the Commission asks a variety of questions regarding permitting charges and how those charges may be related to impacts on the local community.[14]

A. State Law Impacts – Colorado

In 1996, Colorado's General Assembly adopted SB 96-10, codified at C.R.S. 38-5.5-101, *et seq*., which declared that with the exception of cable services, local governments cannot charge private entities for the use of ROW for the placement of telecommunications facilities. The statute preserves local police powers, and allows for the recovery of the costs of administering a permit process. A recent court decision has determined that this statute's limitation of cost recovery to the costs of the permit process is a legislative decision that precludes a local government from recovering all of the actual costs incurred by the public as

[13] NOI at para. 14.
[14] NOI at paras. 16-17.

the result of the communications industry's use of the ROW.[15]

Therefore, in Colorado, since 1996 not only has the need to pay rent for the use of public property been eliminated for the industry, Colorado taxpayers additionally subsidize the costs that these companies cause localities resulting from the use of the streets for telecommunications infrastructure. The industry assured the Colorado General Assembly in 1996 that elimination of these government-imposed costs was critical if Colorado wanted to see increased network deployment, high capacity services, more competition and lower costs. Fifteen years later, Colorado lags behind many other states that have not imposed these restrictions on their local governments.

In the National Association Comments, reference is made to the study conducted by ECONorthwest, in which broadband deployment in Colorado was compared to broadband deployment in Oregon.[16] As noted in the study, Colorado and Oregon have remarkably similar demographics and geography. Colorado's restrictions on local regulatory authority over private sector telecommunications use of the ROW are among the most restrictive in the nation, while Oregon is arguably the most lenient, with more local regulations and fees than almost anywhere else. Utilizing information from the National Broadband Map, the National Association Comments note:

- 53.9% of the population in Oregon has access to four or more wireline providers, whereas only 4% of the population in CO has access to the same,
- 58.5% of the population in Oregon has access to seven or more wireless providers, while only 3.4% of Colorado's population has similar access.
- While DSL penetration in both Colorado and Oregon is high, there is significantly more fiber in Oregon (33.7% of the population has access) than Colorado (a mere 1.7% of the population has access). In fact, Oregon—a state

[15] *Plains Cooperative Telephone Association v. Board of County Commissioners of the County of Washington,* 226 P.3d 1189 (Colo. App. 2009), *cert. denied* (2010).
[16] *Effect on Broadband Deployment of Local Governments Rights of Way Fees and Practices*, Bryce Ward, ECONorthwest, July 18, 2011, attached exhibit to National Association Comments.

that arguably allows localities the greatest freedom in the nation to assess right-of-way fees--has substantially more fiber than the national average (14.5%).

- Broadband speeds in both states are comparable, with more than 99% of the population in both states accessing download speeds greater than .768 Mbps and upload speeds greater than .2 Mbps and 98.4% of the population in Oregon and 99.3% of the population in Colorado accessing download speeds greater than 3 Mbps and upload speeds greater than 768 Mbps.[17]

The Commission must take note of the obvious – while ROW regulations and fees are a cost of doing business, they have no real impact on private sector decisions about where to deploy telecommunications networks.

Therefore, in response to the Commission's question as to whether ROW charges are reasonable, Colorado communities respond by noting that not only are they reasonable, but these local taxpayer subsidies to the industry have done nothing to make Colorado competitive (let alone a leader) in broadband deployment nationwide.

B. State Law Impacts – Washington

In the late 1990s at the urging of key Washington State legislative leaders, local government and telecommunications industry representatives conducted extensive negotiations over a three-year period with the aim of finding a workable compromise that would address the respective needs of both parties. The result of that effort is codified at RCW 35.99, which provides a statutory framework for coordination of access to the public ROW, balancing the needs of the telecommunications industry with the health, safety and welfare of the public. This has been a very successful approach, and Seattle, Tacoma, King and Pierce Counties, and the other RCC municipalities' permitting activities are consistent with the statute.

[17] National Association Comments at Section II.B., pp. 10-11.

C. There Should Be No Standardized "Reasonable" Charges

It is not possible to identify rights of way or wireless facilities siting charges that all stakeholders agree are reasonable, in large part because of the differences in costs incurred by different jurisdictions in their regulatory processes and also due to the differing state laws impacting local government authority for requiring compensation for the private use of public property. Where ROW fees are limited to some element of costs incurred by the local government in connection with the permit process, the fees necessarily must relate to the salary of the local government employees who have roles in the permit review and administrative process. The economic market in Denver is significantly different than in Dinosaur, Colorado.[18]

The problem with seeking standardized levels of compensation nationwide is that it fails to recognize and account for the fact that a significant amount of communications infrastructure is located on private property. If the Commission believes that it is important to explore the possibility of seeking stakeholder agreement on standardized, "reasonable" rates, the Commission has to date, failed to recognize that thousands of miles of communications facilities exist in railroad ROW. Thousands of wireless attachments have been made and will continue to be made to vertical assets owned by private, investor-owned utilities. Railroad and utility companies charge negotiated, market rates for these uses of their property. If the market recognizes a value for this kind of use, and the communications industry accepts these costs of doing business, it is not appropriate for the Commission to explore ways for some property owners (i.e., American taxpayers) to subsidize the telecommunications industry, while other corporate property owners remain entitled to receive negotiated market rates for similar uses of their shareholders' property.

[18] Dinosaur is discussed in more detail in Subsection F, *infra*.

D. Specific Community Information on Fees and Charges

Arapahoe County has established its ROW fees to recover costs permitted under state law. The County does not require a separate license to work within public ROW. A $20,000.00 license/permit bond is required. Fees assessed are intended to recover administrative, review and inspection costs incurred by staff. The fee includes a base fee, a unit fee (based on the utility proposed within the ROW), a traffic control fee and grading, erosion and sedimentation control (GESC) fee. If the proposed utility is greater than 300 lineal feet, crosses more than one lane of traffic, requires detours, along a major arterial roadway ROW, requires significant pavement restoration or exceeds $50,000.00 in value, construction plans maybe required. When plans are necessary, a separate fee of $1,500.00 is required to cover the County's cost for plan review. A utility trench impact fee is assessed based on the area of pavement removal. This fee varies with the road's pavement index. This fee is assessed to offset impacts of utility cuts on the County's roadway infrastructure. The County cannot speak for the industry, but can attest to the fact that its fees have not been challenged as being unreasonable or unrelated to cost recovery.

Seattle is served by multiple providers. Its facilities based landline broadband providers include: Comcast; Broadstripe Cable; and CenturyLink. Wireless providers include: Verizon; AT&T, Sprint; T-Mobile; Clear. Cable modem service is available throughout all of Seattle. There are pockets of the City where DSL service is unavailable primarily due to the distance of a residence from a Central Office or the condition of the existing copper pair wiring, which in some cases is inadequate to support broadband speeds. Enterprise service providers include CenturyLink, Global Crossings, Above Net, Level 3 Communications, 360 Networks Integra, XO Communications and others.

Seattle's current annual pole attachment fee ($23.26) is set by the Seattle City Council (SMC 21.49.065). The pole attachment rates were deemed "just and reasonable" in King County Superior Court.[19] Fees for street use permits from SDOT (posted on its website) are limited to cost recovery related to labor to review application, inspection, permit issuance, geocoding and mapping. The permit fees were recently increased for the first time since 2004. For ROW restoration work providers can hire City staff or third party contractors. SDOT's rates are published and easily accessible. The SDOT user fee structure escalates with length of time. It is designed to incentivize contractors to finish projects quickly and minimize ROW impact.

Cherry Hills Village imposes ROW fees of $480 per installation and a $5,000 bond for two years. Fees are the same for all communications technologies using the rights-of-way. The fees are non-recurring.

Wheat Ridge does not impose ROW permit fees. It issues rights-of-way use permits that are valid for five years, and can be renewed.

Westminster's ROW fees are available online at http://www.ci.westminster.co.us/files/plngEngrFee.pdf. The City's fees are summarized below:

Engineering	**Processing Fees**
Construction Drawing Review *	$750 + $75 (x) the sq. rt. of acres ($1,125 max.)
R.O.W./Street Permit	$50 (+) Trench Cut Impact Fee

A construction drawing review may be required depending on the extent of the work (i.e. new fiber). The ROW permit is required for all work in the public right-of-way.

Centennial explains that its ROW permit fees depend upon the type of work being done in the ROW. For example, there is are Base Fees ($65), Maintenance Activity Fees, Construction

[19] *TCI Cablevision of Washington, Inc. v. City of Seattle*, No. 97-2-02395-5SEA (Super. Ct. for King Cty. , WA, May 3, 1998)

Activity Fees (based on the scope of the project, i.e., unit cost for each pothole, square feet of asphalt cuts, etc.), Plan Review Fees, Asphalt Pavement Restoration Costs, Oversize/Overweight Transport Fees, and Residential Dumpster Fees. In addition, Centennial's regulations provide for costs associated with re-inspection services, after-hours inspections, and permit violation fees. These fees are applied consistently to all users of the ROW and are non-recurring. The City imposes no annual, recurring fees.

In Tacoma, in addition to building permits, the siting of wireless facilities often includes one or more of the following permits: Conditional Use Permit, Variance, and/or Environmental Determination. Permits costs are as follows:

Conditional Use Permit: $4,376.26
Variance: $2,188.13
Environmental Determination: $437.62 - $591.38

Fees for Billable Work Order Permits for ROW restoration, Street Occupancy Permits, sidewalk permits, driveway permits, barricade permits, and miscellaneous trench permits will vary depending upon the size and scope of the work.

These land use fees are generally based on costs to process the permits and benchmarking with surrounding communities. The fees listed in the Tacoma Municipal Code ("TMC") were adopted by ordinance in 2004. As allowed by TMC 2.09.020, the fees are adjusted each year in accordance with the Seattle-Tacoma-Bremerton, Washington Consumer Price Index for All Urban Consumers.

In Longmont, ROW fees are as follows:

Permit Fee - $10.00
Initial Plan Review:
60 Minute Maximum - $25.00
Additional Plan Review - $25.00/hour

Construction Inspection:
Three Inspections per Permit - $30.00

Additional Inspections - $25.00/hour

Most permits will cost $40.00. Additional inspections and/or plan review may require an additional $25 fee.

Infrastructure Permit / plan review:
$25.00 per hour for application and plan review (one hour minimum)

Longmont's fees are based on previous experience, and are adopted by City Code. As noted above, Longmont's fees do distinguish between application/administrative and/or processing fees, and other kinds of fees for the use of the ROW. The City does not impose any recurring fees.

Broomfield's fees vary by the extent of the work required. The fee schedule is included on the permit application. The minimum permit fee is $20. The plan review fee of a permit is 50% of the inspection fee, which is determined from the fee schedule on the permit. For many communication installations, the permit fee is the minimum of $20; $15 of which is inspection fee; $5 is plan review fee. Broomfield does not impose any recurring ROW fees or charges.

Tacoma Power makes it poles available for attachments. Pole attachment fees are as follows:

Application Fee: $100.00, plus $5.00 per attachment per pole.

Security Deposit: Equal to one year's annual attachment fees.
Annual Attachment Fee: $16.98 per attachment.

Any construction, relocation or adjustment costs are at the applicant's expense; these fees can vary greatly depending on the scope of work. Currently Tacoma Power has pole attachment agreements with a number of communication companies including: Qwest, Comcast, 360Networks, Advance Telecom Group, Cellnet, ELI, Eman Networks, Rainier Communications, Level 3 Communications, along with various schools and other government agencies.

In DuPont, while a ROW permit is the most common permit required for work in the ROW, a site development permit may be required for large jobs or installation of new facilities. The minimum fee for a ROW permit is $75.00, with additional 'per lineal foot' fees applicable if the work involves street cut excavations or trenching. Typical review turnaround for ROW permits is 1-3 days. A longer review period is infrequent but could occur if insufficient information is provided with an initial application submittal or if a particular project is complex or involves multiple potential conflicts with other existing or planned infrastructure. Permit applications are available on-line or at City Hall and are typically mailed, faxed, or scanned and e-mailed back to the City for review along with project information and related traffic control plans (where applicable). To meet requirements for bonding, the City allows standing bonds to be provided and kept on file to cover work that might be required within the ROW. When a permit has been reviewed and is ready to be issued the City contacts the applicant to inform them that the permit is ready for pick up upon payment of any outstanding fees (if payment has not already been received).

E. Criteria for Determining Reasonableness of Charges

Again, the National Associations will address this issue in detail in their Comments, and the Local Governments concur in that position.

As noted in Section IV.A *supra*, ROW fees to telecommunications providers in Colorado are subsidized by taxpayers. The Local Governments believe that if the State allowed its local jurisdictions to recover a fair market rental value, the taxpayers would be better protected, and such charges would not negatively impact broadband deployment. In Arapahoe County, fees are based on the lineal feet of cable, conduit proposed within the ROW irrespective of the trenching or boring technologies employed. Pavement cuts are assessed an additional fee to offset impacts

of utility cuts on roadway pavement as described above. Fees are assessed one time for each permit and are not recurring.

F. Fees Based on Demographics

The Commission has asked whether ROW or wireless facilities site administrative and/or usage fees vary by the demographics of the customer base, including whether the government entities regulating the facilities are located in dense, urban, and/or suburban high-income areas versus other areas.[20] The answer, of course, is "yes." And the facts behind that answer demonstrate why there is no connection between the regulatory process and the fees charged, and where the private sector is willing to deploy broadband networks and provide services.

If fees are based upon cost recovery, the differences in local economies will affect what a particular service will cost. It will vary from community to community. Where fees are recovered to address pavement degradation impacts, the materials used as well as the costs differ depending upon whether the ground underneath the road base is in South Florida or the Rocky Mountains. Likewise, if fees are based upon the market value or some other measurement of property value, property values too will vary depending upon location.

It will be helpful for the Commission to consider the case of Dinosaur, Colorado. Dinosaur is a town of two square miles, with a population of 339. It is located in northwest Colorado, near the entrance to the Dinosaur National Monument. Dinosaur is a haven for hikers, rafters, fisherman and other lovers of the outdoors who wish to experience Colorado's magnificent scenery. The Town of Dinosaur has no ROW regulations, no ROW fees and very few regulations addressing the siting of wireless facilities. In other words, unlike more populated parts of Colorado, there are none of the regulatory costs that the industry must pay before

[20] NOI at para. 19.

deploying communications facilities. Dinosaur can easily say that the shot clock ruling has had no impact, because in the year prior to the order and in the time subsequent, it has had *no applications* to site any facilities.

Indeed, Dinosaur is begging for broadband deployment. Recently, the Town incurred the costs of removing the abandoned infrastructure of 2001 Cable, the small cable operator that formerly served the Town and closed its business. No other cable operators have approached the Town with an interest to provide service. The Town has an online school that for a time, had to consider closing, due to the very minimal connectivity it received from its satellite provider. Just recently, CenturyLink has begun providing a T-1 line which has allowed the school to remain open. The school would much prefer greater capacity and faster speeds at affordable prices, but there is no competitor available.

The Local Governments submit that Dinosaur is not unique when compared to other rural communities in America. The local regulatory process has no impact on the private sector's willingness to deploy broadband networks and provide affordable, high speed services.

V. QUALITATIVE INFORMATION

A. Local Governments are Constantly Balancing Public Interest Goals in the Best Interests of Their Communities

The Commission has asked about the extent to which local requirements are designed to achieve public interest goals, such as ensuring public safety, avoiding disruption of traffic, or maintaining roadways. The Commission specifically inquired as to how localities weigh issues like preventing the public disruption and damage to roads that accompanies street cuts, or satisfying aesthetic, environmental or historic preservation concerns, with goals of greater fixed and mobile broadband deployment and adoption through timely processing of permits,

nondiscrimination, transparency, and reasonable charges.[21] The Local Governments cannot stress to the Commission strongly enough that a balancing of these and other public interest objectives is what drives local government operations every day.

Steilacoom does not view these as mutually exclusive goals. The Town's regulations are designed to prevent unnecessary damage to streets, be sensitive to the historic district and also provide timely processing of permits in a transparent, non-discriminatory way. In other words, the Town does not look for ways to call out one public interest goal and cause the rules related to that goal to trump all other matters of public interest concern.

The Commission would be wise to follow a similar course. For example, it is an important goal that all citizens have the availability of electric service. However, the importance of receiving electric service does not mean that providers of electricity are subject to a special set of rules governing placement of facilities in the ROW due to the importance of the service their facilities provide. No private user of public property should be beneficiary of special rules or regulatory waivers, due to how much we value their services. The regulations that are promulgated to protect the public health and safety must apply to all users, and cannot be industry specific.

Pierce County has experienced significant public safety issues in its management of ROW and attempts to ensure that permit holders comply with applicable safety codes. Since 2009 the County has logged 120 utility related incidents. Fifty instances involved utilities installed at an improper depth; 54 involved pedestals that were not maintained and landscaped as required, and were damaged by the County's periodic roadside vegetation control program; and 16 involved overhead/guy wire damage. The reports for all 50 incidents documenting installations at improper

[21] NOI at para. 22.

depth are in the attached as Exhibit E.

It is common for Pierce County staff to hear telecommunications workers state that it is cheaper for them to install their utilities improperly and incur the cost of repair than it would be to install them at proper depth initially. Each time County crews encounter or damage an improperly installed utility it costs the County $400 - $500 in labor and equipment on average. This is a conservative estimate and is based on a quick response from the utility company to affect repairs.

In Seattle in June, 2011 Qwest (now CenturyLink) was installing an above-ground cabinet in the ROW. In the course of the project multiple permit conditions were violated, causing significant disruption. Problems included:

- Violation of the City's noise ordinance by working at night without authorization or notification;
- Failure to notify any Street Use inspectors that they were working off hours, so SDOT was unable to schedule an inspection;
- Work continued for without authorization or notification over one month after permit expiration.

Seattle notes another recent example where Qwest had permits to install three cabinets. It failed to follow the requirement to contact the City arborist prior to removal of any trees and proceeded to removed three trees that were part of City's "Green Streets" program. Qwest subsequently took six-months to submit a landscape plan for correcting the issue. Seattle notes that while these examples are not "standard operating procedure" for Qwest, these are also not uncommon occurrences. Local governments must be responsive to resident concerns about aesthetics and neighborhood character, which are negatively impacted when permit holders fail to comply with reasonable regulations.

B. Unreasonable Refusal to Build Broadband Facilities

The Commission asks whether there are situations in which localities believe that infrastructure providers have unreasonably refused to build out broadband facilities despite best efforts on the part of the locality to encourage deployment through rights of way or wireless facility siting policies.[22] As noted previously, Cherry Hills Village adopted code revisions to streamline the process for approving siting applications for wireless facilities siting. It encouraged representatives of the wireless industry first to assist in developing the code revisions and then in deploying more network facilities in Cherry Hills Village. Some providers did in fact upgrade service. T-Mobile did not, and has significant gaps in coverage throughout the City.

Beginning in May 2010, the City reached out to T-Mobile representatives in an attempt to determine if T-Mobile had any plans to improve service in Cherry Hills, and if so, when. On May 27, 2010, T-Mobile sent a message to Cherry Hills indicating a desire to meet and "discuss in more detail T-Mobile's new site development process in general and the status of the local plan that might impact site development in the Cherry Hills Village area."[23] After numerous attempts to follow up by the City, and numerous responses from T-Mobile indicating that it still did not have any substantive information it was able to provide, on July 7, 2011 T-Mobile finally responded with definitive information, stating "there are no plans to build additional sites in the Denver market throughout the remainder of 2011, beyond the projects currently "in the pipeline", none of which are located in Cherry Hills Village."[24] The Commission has focused on how long local governments take from complete application to final decision. Here, we have an example of taking over 13 months for the industry to simply respond to a substantive question.

[22] NOI at para. 23.
[23] Steven Caplan email message to Nancy Rodgers, May 27, 2010.
[24] Mark Wilson email message to Nancy Rodgers, July 7, 2011.

The Local Governments offer this Cherry Hills Village example not as a criticism of T-Mobile. Indeed, T-Mobile has been one of the leading members of the wireless industry to partner with local government associations and their members in a variety of education efforts. It generally maintains excellent relationships with these Local Governments. The Cherry Hills experience with T-Mobile demonstrates that the local regulatory process has no impact on industry decisions where network infrastructure will be deployed. The Local Governments are not privy to the industry's boardrooms, and are not consulted on capital budget development and network deployment decisions. The decisions where to build are made wherever the company believes it can generate the best return on its investment. For reasons unknown to the Local Governments, some wireless providers make it a priority to have coverage in Cherry Hills Village, while at least one does not. Local regulatory policies and fees *have no impact* in these decisions.

In 2006 Seattle issued a Request for Interest seeking private broadband service providers willing to partner with the City to leverage City assets for the construction of a fiber to the home broadband network that would also include a wireless overly for mobile broadband applications. A copy is attached as Exhibit F. As an incentive to the industry the City offered unprecedented access to many City assets such as ROW, underground conduits, poles, land, real property and other assets, as well as staff expertise. Despite these efforts no company stepped forward to work with the City and leverage its assets.

VI. UPDATING OF ORDINANCES AND STATUTES

A. Local Governments Have Revised Codes to Facilitate Deployment

As noted above, Arapahoe County's Planning Commission recommended new code provisions addressing wireless facilities on June 28, 2011. Adoption by the Board of County

Commissioners is anticipated in August 2011, with an effective date in September 2011. For the most part, the proposed new code does not rely on specific technology due to rapidly changing technology needs, but rather focuses on land use impacts such as ability to conceal, type of installation (freestanding/concealed, freestanding/non-concealed, attached to existing structure or to a replacement for an existing structure), setbacks, mitigating design features such as landscaping, etc., and on safety considerations within the public ROW.

Cherry Hills Village updated its wireless code in 2007 to allow for administrative approval of any facility located on an existing or similar replacement pole in the right-of-way subject to certain standards. Since the adoption of the updated code a Distributed Antenna System ("DAS") has been approved and installed in the City.

Westminster has updated its code to better delineate between private land use and public (City owned, such as parks; not ROW) processes.

Centennial's review process for wireless facilities is currently being updated. A public hearing before City Council is tentatively scheduled for August 15, 2011. The proposed code changes afford an administrative review process for camouflaged freestanding communications facilities and attached communications facilities (including co-locations). Only non-concealed freestanding communications facilities, including over-height facilities, will be subject to a public hearing process.

In Tacoma, TMC Section 13.06.545, regulating the location, type, and development of wireless facilities, has not had a complete update since it was originally adopted in response to the Telecommunications Act of 1996. However, the original drafting was completed through a collaborative process with wireless providers. Except for small code clarifications, the current code continues to adequately address the development of wireless facilities.

In addition, between 2008 and 2010, Tacoma underwent a major study and rewrite of its regulatory codes relating to ROW, telecommunications franchises, permits and licenses, and cable television franchises. The City reached out to private telecommunications companies, private investor owned utilities, and public utilities like Tacoma Power, to seek input on how the City could best meet its legitimate regulatory needs while at the same time addressing the needs of the regulated community. This process resulted in the successful passage of new code provisions by the Tacoma City Council, and is one of the best practices described in Section VIII.A *infra*.

Denver followed a similar process in 2006 and significantly revised its code provisions relating to siting of wireless facilities. More information on the Denver code revisions is described in Section VIII.A *infra*.

In Seattle, SCL recently completed a re-engineering of the pole attachment permit process to better facilitate access to poles by providers of broadband services. While there were some initial delays in 2010 year due to unforeseen workload, the process has dramatically improved cycle times. This year SCL has broken its own records for expedited permits. Even though work load to SCL is now greater than before; the cycle times have been dramatically reduced. SCL currently has 91 wireless antenna sites on its distribution poles in the ROW.

SDOT street use permit section is charged with balancing the many competing needs for Seattle's ROW. Its first priority is the safe mobility of people and vehicles. SDOT undertook a ROW Management Improvement Program ushering in new processes and tools that improve the City's ROW management and facilitate greater access to the ROW. Shorter permit turnaround times were one of the goals. The projects include improvements to planning, coordinating, permitting, analyzing and communicating work in the City's ROW. In combination, these projects are designed to improve mobility while allowing for maintenance of the City's

infrastructure. SDOT routinely posts Client Assistance Memos (CAMs) online.

B. Particular Challenges for Certain Technologies or Equipment

The Commission questions whether existing ordinances or other requirements successfully address the placement of small antennas on existing facilities in rights of way, and in particular, whether there are any challenges that may apply to the deployment of microcells, picocells, femtocells, and DAS.[25] The Commission also asks whether any states or localities allow all of the proposed DAS antennas within a DAS network to be combined in a single permit application, and is this or would this be helpful for DAS deployment.

Steilacoom's ordinance does not mention DAS, but does provide for the ability for one network to be addressed in one application. The small antennas in these types of applications are not treated uniquely.

In Arapahoe County, these kinds of applications are not currently processed or proposed to be processed as a single land use application, as the locations may extend across a considerable area and impact multiple types of land uses. These applications will require a similar level of effort to evaluate each individual site based on zoning of the land, proximity to single-family homes (requires notification due to neighborhoods/residents wanting to be informed of changes before they occur and the ability to comment on appropriate land use impacts such as site design), compliance with setback requirements, proposed design/concealment, location and size of ground-based equipment, and need for any mitigating design considerations. Wireless facilities to be located within the ROW require engineering review and may require certain agreements.

In Cherry Hills Village, under a single right-of-way use agreement multiple facilities can be installed within the right-of-way subject to the terms of the agreement.

[25] NOI at para. 24.

Seattle City Light has had a good working relationship with DAS providers. Those entities that have been able to meet City design standards for pole mounted antennas, which have been developed to protect the safety of City line workers, have built out their networks with minimum difficulty. Crown Castle's system is an excellent example of this.

Generally speaking the Local Governments do not treat technology-specific equipment like microcells, picocells, femtocells, and DAS antennas uniquely. It is interesting that the Commission should ask whether (and impliedly suggest that) stakeholders think they should be treated differently. For years, local governments have been told by the industry and by the Commission that regulations should *not* be technology-specific, and that the regulatory framework should play no role in picking winners and losers in the private marketplace. And indeed, the regulations of the Local Governments have heeded that advice. Regulations may differ depending upon the size of a facility, and the underlying public policy reason relates to public health and safety. It may be an aesthetic issue related to the visibility of the facility and its impact on view corridors, or it may relate to the wind resistance or potential safety risks from falling ice. The Local Governments do not however, adopt regulations specifically tailored to certain technologies for other reasons, and respectfully suggests that the Commission is wrong to propose otherwise.

C. Classification of Facilities as Utilities

Most of the Local Governments' regulations do not classify these facilities as either public or private utilities. If there are public health and safety reasons for the Local Governments to be involved in the regulation of these kinds of facilities, the regulations address those concerns, and do not distinguish between whether a facility is part of a public or private utility network.

D. Facilities in ROW Subject to Local Zoning

The Commission asks to what extent are facilities in the ROW subject to local zoning processes.[26] Arapahoe County's code proposed for adoption in August 2011 (effective September 2011) provides that wireless facilities may be located, with prior approval of the Public Works and Development Department, on/attached to existing structures within the public ROW or on/attached to replacements for existing structures within the public ROW. This may include County-owned structures, such as traffic signals, as well as utility-owned structures such as street lighting. Ground-based equipment may be sited in the public ROW on a case-by-case basis. The Engineering Services Division has drafted criteria for approving wireless facilities and ground-based equipment; these draft criteria are currently undergoing an internal review process within the County.

Such facilities are subject to Cherry Hills Village and Englewood zoning regulations. For example, if an applicant proposed to replace a 25 foot high light pole (which is permitted in a certain zoning district) with a light pole that included wireless facilities, a pole of similar height would be permitted. A pole of additional height that exceeded the maximum permitted height in that zoning district would require that the applicant go through a special or conditional use application and hearing process. In Wheat Ridge, facilities are subject to the permit application process, not a local zoning process.

Longmont's Land Development Code encourages telecom facilities to be located on existing public utility or street lighting poles or emergency communication facilities to the maximum extent practicable. However, the antenna height shall not exceed the height limit of the zoning district in which they are located or border on. Facilities shall not conflict with existing or

[26] NOI at para. 24.

planned utilities or facilities in the right-of-way and shall conform to sight distance requirements.

Free standing wireless telecommunication facilities are not permitted in Longmont's residential zoning districts, the Medical District Overlay zone, or the Commercial - Regional zoning district. They are considered conditional uses in the Commercial, Central Business District, Business Light Industrial, Mixed Industrial, General Industrial, Public, and Agricultural zoning districts. This means that these facilities require a neighborhood meeting in advance of submitting an application and they require Planning and Zoning Commission approval.

Building or structure mounted wireless telecommunication facilities are considered conditional uses in all residential zoning districts and the Medical District-Overlay zoning district. They are administratively permitted uses in all the commercial and industrial zoning districts and the Public and Agricultural zoning districts. They are either permitted or limited uses in the Mixed Use district.

E. Disparate Treatment

Regarding the issue of whether attachments of a wireless antenna to an existing public utility pole, and a collocation, where a wireless antenna is attached to some other existing structure are treated differently, Steilacoom does not differentiate between attaching to a public utility pole and a different type of structure.

Cherry Hills Village allows administrative approval for facilities on existing utility poles as long as those facilities meet specific design standards. Centennial's new code will as well. If the facilities are not able to meet the design standard then a conditional use application is required. New stand-alone facilities in the rights-of-way require a conditional use permit unless they are camouflaged. If camouflaged, an alternative review procedure is provided and administrative approval without a conditional use hearing is possible.

F. Different Considerations for Some Types of ROW

The Commission asks if there are different or additional considerations required for some types of ROW, such as those used for transportation, as compared to other types.[27] The vast majority of the ROW do in fact involve and impact transportation, both vehicular and pedestrian. Therefore, most of the Local Governments have adopted time, place and manner regulations related to how entities impact the ROW. For example, a lane of traffic can generally be closed while a company deploys fiber, but not on arterial streets during rush hour. These regulations apply to telecommunications companies as well as water, sewer, gas, and electric providers. Regulations similarly cover repair standards, bond requirements to address damages, and a host of other issues related to public health and safety. To the extent that ROW exists in areas where the primary goal is not the safe movement of vehicular and/or pedestrian traffic, regulations such as lane closure times do not apply. Regulations such as bond requirements, noise limitations at certain times of the day, notification of neighboring properties, etc., will still apply.

G. Application of Conflicting Laws

The Commission asks if there are there instances in which conflicting laws may apply to the attachment of a wireless antenna to an existing structure.[28] Some of these Local Governments (and indeed, many throughout the Nation) have preserved and maintained historic areas, and have adopted unique regulations to that end.

Steilacoom notes that its Historic District regulations contain size and location limitations, and these will impact siting applications within the Historic District. Both Arvada and Littleton, Colorado have well known and well preserved "old town" areas in each city. While historic district regulations will impact some kinds of deployment, even in these areas, localities have

[27] NOI at para. 25.
[28] *Id*.

been creative in addressing industry concerns. Olde Town Arvada is perhaps best known for its iconic water tower.[29] One would imagine that this publicly owned historic asset would be off limits for wireless attachments. Yet as noted in Section III.C, *supra*, when Cricket approached the City to determine if the water tower could be leased for placement of wireless facilities, the parties worked together to negotiate a lease that accomplished Cricket's technical goals and had minimal aesthetic impact.

H. Many Local Governments Express a Preference for Collocation and Placement on Public Property

The Commission asks if states and localities show any preference for collocated antennas or for the placement of wireless facilities on public property.[30] Steilacoom's ordinance prefers collocation and use of public property, as does Cherry Hills Village, where an administrative approval is allowed for placement of facilities on existing utility poles in public rights-of-way. Englewood's code includes a preference for collocation. Craig prefers collocation and placement of facilities on public property and has a reduced regulatory process for such applications.

Centennial's new code will likewise encourage collocations. The new code generally assumed that most users in the ROW are seeking to collocate on existing infrastructure, such as a traffic light pole or street standard. These uses are permitted provided that the owner of the vertical infrastructure approves of the use and that it does not exceed the height of the existing infrastructure on which it is mounted by more than eight feet. There are provisions for new freestanding facilities in the ROW, which are encouraged to be designed as camouflaged freestanding facilities and no more than eight feet in height than other vertical infrastructure in the same streetscape. The code will also include requirements for the screening of ground based

[29] http://oldetownarvada.org
[30] NOI at para. 25.

equipment.

In Arapahoe County, the current code does provide a preference for collocated facilities and requires the applicant to demonstrate efforts to collocate as part of the application for a new location (one that is not collocated). Both the current and proposed zoning code provisions restrict placement of wireless facilities within single-family residential areas (such as detached homes, attached townhomes, and similar) to public and quasi-public properties. The proposed zoning code amendments would, however, also facilitate placement of facilities within public ROW adjacent to residential development.

Tacoma's municipal code is designed to encourage collocation of facilities and/or to locate new facilities on public or quasi-public property. New towers are prohibited in residential districts unless located on a public or quasi-public property. The permitting process is generally streamlined in areas where the City encourages facilities and is more complex in sensitive areas, such as public property in a residential district. When a facility is permitted as-of-right, such facility can generally be authorized after building permit review. The process is further streamlined by allowing waivers to certain development standards to be evaluated with the Conditional Use Permit, rather than requiring an additional permit.

However, it is Tacoma's experience that state law relating to environmental review has not kept up with wireless technology such that environmental review is often necessary. This state law review can take longer than building permit review and can slow down the permitting process.

Breckenridge regulations state a preference for collocation and the Town has traditionally processed collocation applications in a very short period of time. Longmont, Thornton, Broomfield and Commerce City have regulatory provisions that similarly promote collocation.

Like other local communities Seattle also actively promotes broadband deployment and competition in telecommunications services. Seattle has stated that as a matter of policy it wants competition in broadband services and has sought to create the conditions to incentivize increased private investment in next generation telecommunications networks. For example, City Council Resolution 29344 passed on April 15, 1996 authorizes wireless siting on City-owned property and facilities. It states, in pertinent part, "The City should encourage the use of City real property and/or facilities in siting wireless facilities for commercial mobile services and wireless common carrier access exchange services, as defined by Federal law and Federal regulations, when appropriate and when there will be minimal disruptive impacts on neighborhoods…" City Ordinance 1118737 encourages City departments to lease property and facilities to wireless entities, provides a standard rental agreement and gives authority to Seattle department heads to negotiate and execute wireless communication site agreements.

VII. CONSISTENT OR DISCRIMINATORY/DIFFERENTIAL TREATMENT

The Commission asks how ordinances have addressed differences in ROW users and wireless facilities siting applicants, the different uses they make of ROW and sites, and the different equipment they seek to deploy.[31]

Steilacoom regulations are non-discriminatory as to applicants and equipment. The proposed code changes in Arapahoe County do not differentiate between wireless facilities applicants and the types of equipment they use beyond the generic requirement applicable to all providers to attach antennae to existing structures or to replacements for existing structures. Likewise, Cherry Hills Village and Centennial regulations are similarly consistent in their treatment of facilities applicants. All fee schedules and permitting and zoning requirements are

[31] *Id.*

publicly available and non-discriminatory.

While the Local Government can say that their regulations do not discriminate or provide special treatment to certain kinds of communications applicants versus others, there are exceptions to this statement when regulations are applied to communications applicants versus other users of ROW and public property. Local government regulations do discriminate *in favor of certain communications applicants,* as a result of Commission action and some state laws. As a result of the Commission's decision in the competitive cable franchising matter[32] and the shot clock ruling[33], and state statutes such as Colorado's SB 10[34], local governments have made changes in code provisions to address these federal and state mandates. Today, if a permit applicant that happens to be a water and sewer provider files earlier than an applicant for a wireless facility, work on that first applicant's permit may stop a week later, if an application for a wireless facility is received. Regardless of staffing levels and workloads, local government staff move previously filed applications of non-telecommunications entities to the back of the line in order to ensure compliance with the shot clock ruling. To be sure, occasions are rare when such action would cause unreasonable delay to the other applicant. It cannot be denied however, that wireless facilities applicants get special discriminatory treatment, as a result of Commission action.

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[32] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, 5103 (2007) ("621Order").

[33] *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *recon. denied*, 25 FCC Rcd 11157 (2010), *appeal pending sub nom., City of Arlington and City of San Antonio v. FCC*, Nos. 10-60039 & 10-60805 (5th Cir.).

[34] Discussed at Section IV.A, *supra*.

Local governments have also amended code provisions to ensure that competitive cable franchises can be addressed within the time frames dictated by the Commission in the 621 Order. However, while we can say that competitive cable operators will receive favorable, discriminatory treatment compared to an applicant for a gas and electric franchise, the Commission's 621 Order has had no practical effect because none of the Local Governments have received new, competitive cable franchise applications.

Finally, as noted above, Colorado statute requires taxpayer subsidization of telecommunications companies' use of public ROW. As a result, these companies are the beneficiary of disparate treatment imposed by state law, and are not required to compensate the public as are other users of the ROW.

VIII. PRIOR EFFORTS TO RESOLVE CONCERNS

The Commission asks what interested parties have already done to address ROW and wireless siting concerns, including instances in which government entities and industry have worked together in a positive manner to foster broadband deployment, and the factors or circumstances that led to such constructive collaboration.[35] The Local Governments will describe a variety of activities, all of which we consider to be best practices that can be replicated by others, taking into account specific needs and interests of each local community.

A. Revising Local Codes with Industry Input

Arapahoe County is one of many examples of bringing representatives of the wireless industry to the table to provide input to County staff in the preparation of new land use regulations. The County's process involved multiple meetings with the industry in helping to devise regulations that meet the County's need to protect public health and safety, while

[35] NOI at paras. 34-35.

addressing industry needs for siting of facilities in a reasonable manner. The new regulations were approved by the County's Planning Commission on June 28, 2011, and will be considered by the Board of County Commissioners in August. It is anticipated that the new code provisions will be effective sometime in September. Denver, Tacoma and Cherry Hills Village have all undertaken similar processes with industry representatives at the table, and the result has been a better regulatory process.

Tacoma's similar process yielded positive results. Industry representatives participating in Tacoma's code revisions included Qwest, Comcast, Integra Telecom, AT&T, Sprint, T-Mobile, Level 3, Rainier Connect, and other non-telecommunications entities like Puget Sound Energy and the Master Builders Association of Pierce County. As noted previously, three key elements of the Tacoma Municipal Code were addressed – ROW access, cable franchises and telecommunications franchises and licenses. Before this project, code provisions were in some cases over-regulatory in scope and in some cases in direct conflict with each other. Some provisions that the code imposed on franchise holders conflicted with similar provisions contained in franchise agreements.

The process that the City followed was to meet internally and determine in the first instance what City staff felt was necessary in order to meet its legitimate oversight needs. After a draft of new provisions was developed by staff, it was shared with Tacoma Power and Click! (the City-owned electric and cable entities), and concurrently shared with private sector entities. Multiple meetings and subsequent drafts ensued. The extensive, and often extremely fact specific discussions were critical in providing the City with a better understanding of how the regulations impacted the regulated community. It was equally important for the regulated community to gain a better understanding of the legitimate oversight needs of the City. The process resulted in

compromise on all sides, and a final presentation before the Mayor and City Council where the regulated community representatives commended the City for affording them the opportunity to participate in such an important process.

In 2006, Denver appointed a Telecommunications Task Force to assist in rewriting City codes and permitting regulations to better address local government/community needs and concerns, while minimizing the regulatory impact and cost to the industry. Industry representatives were invited and did participate as members of the Task Force. The result was a revised regulatory process that works better for all parties involved.

The GMTC was involved in another example of inviting the industry to assist in improving the regulatory process regarding ROW. As an intergovernmental entity, the GMTC serves primarily as an information, education and advocacy resource for its member governments. It has very little direct regulatory authority. After passage of SB 10 in 1996, while franchising authority of telecommunications companies was eliminated, local police power authority over ROW was preserved. GMTC decided to help members comply with SB 10 by developing a model ROW regulatory ordinance that would describe the full range of local government police power, without straying into franchise-type regulations that had been preempted by the state law. GMTC invited industry to participate in that process. Because the subject was ROW, invitations were extended to telecommunications companies and other users of the ROW. Industry participants included AT&T Broadband (now Comcast), Qwest (now CenturyLink), WideOpenWest, and Public Service Company of Colorado. The process resulted in a model ROW ordinance that was made available to GMTC members. Some members adopted substantial parts of the model code, while others adopted more limited sections. The model code is available today at http://www.gmtc.org/reg_auth/row_ordinance.asp.

GMTC has a track record of working cooperatively with industry in this manner. On behalf of its members it has negotiated model franchise agreements in the early 1990s with TCI and in the late 1990s with AT&T Broadband and subsequently with Comcast. With industry input, it has adopted regional customer service standards for cable services that are essentially uniform throughout most of the Denver metro area. In 2005 and 2006, it negotiated a model franchise agreement with Qwest, and a number of GMTC jurisdictions were prepared to adopt versions of that agreement, until Qwest changed course and decided not to enter the cable service market. At present, GMTC is working on model franchise language with CenturyLink, as that company considers entering the cable franchise market in metro Denver.

In 2006 and 2007 Cherry Hills Village worked extensively on updating its zoning provisions related to wireless facilities. It was one of the first communities to allow facilities on existing poles in the ROW, making the process easier for DAS and similar facilities. Cherry Hills invited wireless providers to assist in the code revisions and received helpful suggestions throughout the process. The local staff for AT&T Wireless was particularly helpful in providing feedback and suggestions. Similar to the other examples provided in these comments, the end result was a much simpler public hearing process, where interested parties thanked City Council for the ability to participate in the process, and supported the final result.

More recently, Cherry Hills has worked with a company installing a DAS system under its right-of-way ordinance to make an amendment to the installation design criteria so that their proposal would remain under the expedited administrative approval process. At present, the City is planning the construction of a new municipal police/fire facility and has sent letters to wireless providers letting them know that the City is willing to site wireless facilities at the new municipal center.

Centennial has made efforts to communicate with all providers in the City and to facilitate the industry's ability to find appropriate sites. The ability to develop such positive working relationships depends in large part on each entity's willingness to work together. Centennial has been particularly successful in working with Verizon Wireless and NewPath Networks (now Crown Castle), in large part because the local representatives of these companies have been willing to work cooperatively with the City. NewPath worked with the City to develop an approved standard for the installation of their equipment on street light poles. Verizon worked with the City to develop a standard using traffic signal poles. With these standards in place, a more streamlined process can be utilized to move the application through the approval process.

Thornton also reports recent work to update and revise its ROW code provisions. Thornton invited and received significant feedback from the regulated community of ROW users. Industry representatives expressed support for the revised code provisions.

Local Governments will continue to work creatively with industry, even though the results are not always successful. At the request of Maryland-based CityNet Communications in 1993, Seattle adopted an ordinance, authorizing non-exclusive, revocable Master Sewer License Agreements which would allow private corporations to construct, install, maintain, replace and remove fiber optic networks and related equipment within specified areas of Seattle's storm drains and combined and sanitary sewer systems. Thousands of dollars were spent by the City to enact this legislation. Subsequently neither CityNet nor any other company has applied to install such a system.

B. Efforts to Reduce or Eliminate the Need to File Multiple Applications

The Local Governments offer an excellent example of multiple jurisdictions working together to eliminate the need to file multiple applications. In 2007, ten communities in the north

and northwest Denver metro area came together to form an intergovernmental entity called Colorado Broadband Communities ("CBC").[36] An original goal of CBC was to cooperate in seeking a private industry partner to create a carrier grade wireless broadband network covering all ten cities. The CBC members spent considerable time working with their planning and public works staffs to develop a standardized permit application. A Request for Proposals was issued to identify a potential industry partner that would build the network and provide the broadband services to end users. CBC members offered the reduced regulatory burden of a "one stop shop" for permitting in all ten cities as part of the incentive to the private sector to deploy the network.

In 2007 and 2008, CBC negotiated an agreement with Affinity Telecom, Inc., a Colorado competitive local exchange carrier. Despite that agreement, Affinity was not able to secure financing, and the network was never constructed. Still, the effort demonstrates the willingness of local governments to come together and streamline administrative processes – especially as a quid pro quo for a guaranty of additional broadband deployment and provision of services. The CBC has remained intact as an intergovernmental entity and is currently cooperating on regional public safety initiatives, as well as continually seeking new ways to promote broadband in the region.[37]

C. State Statutes That Increase Uniformity and Reduce Costs; and State Barriers

The issue in Colorado with SB 10 has been addressed previously. The undeniable effect of SB 10 is that although the statute significantly reduced telecommunications companies' costs of doing business, it had absolutely no impact on broadband deployment, competition, adoption or prices.

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[36] The original name of the entity was Colorado Wireless Communities. The members are the cities of Arvada, Lakewood, Golden, Wheat Ridge, Broomfield, Northglenn, Thornton, Superior, Boulder and Louisville.

[37] For more information about CBC, see http://coloradowirelesscommunities.com/index.cfm?fuseaction=home

In contrast to Colorado, the Washington experience with the development of RCW 35.99 has been successful. A key difference appears to be related to process. In Colorado, the General Assembly imposed an industry-drafted preemptory statute on local governments. In Washington, and similar to the local government best practices described here, the parties worked together to reach consensus on many issues that respected the legitimate needs of all parties. It is fair to say that RCW 35.99 has made ROW deployment easier. It is not clear whether the statute can be credited with increasing the amount of broadband deployment the state would have seen without the statute.

State laws are also their own barriers to broadband deployment. The Commission has recognized this in Recommendation 8.19 of the National Broadband Plan. While Longmont has leased some City owned dark fiber to private broadband providers, the passage of state legislation in 2005 has erected significant barriers that preclude other opportunities to promote and expand partnerships with the private sector.[38]

D. Effect of Best Practices, Streamlining Efforts and State Statutes

The Local Governments believe that the processes described in subsection A above are examples of best practices that work on the local level. Community needs differ from jurisdiction to jurisdiction. When local governments include industry representatives in the process of evaluating and amending siting regulations, most issues get resolved before the regulations are presented to the elected officials for adoption. Each side gains a better understanding of the interests of the other. And the entire community wins when the regulated community can attend a public hearing and thank the elected officials for having a staff that included them in the process and gave them an opportunity to address issues of concern before the code amendments came

[38] C.R.S. 29-27-201, *et seq*. (2005).

forward for approval. Even when the parties are not able to reach consensus on every issue, the inclusive process results in better regulations, and an improved relationship between the local government and the regulated community.

It is also critically important to note what these best practices, streamlined regulations and state statutes reducing costs do *not* do. They do *not* guaranty any additional broadband deployment, provision of faster speeds, increased competition, better prices or greater adoption. Unless there is a *quid pro quo*, where the industry makes a commitment or is bound by a legal requirement to deploy more broadband facilities and offer upgraded services in areas where it has been provided streamlined processes, tax and fee reductions and other kinds of special treatment that has been described in these Comments, there is no guaranty that the actions taken by the Commission, state legislatures or local governments result in anything more than increased revenue for telecommunications companies that can be spent in a variety of ways that have nothing to do with broadband deployment.

The Commission's reference to the shot clock ruling in its report titled *Bringing Broadband to Rural America: Update to Report on a Rural Broadband Strategy* demonstrates a gap between belief and reality.[39] It cannot be demonstrated that the Commission actions in connection with the shot clock ruling have resulted in additional broadband deployment. It can however, be documented that local governments have incurred costs, at taxpayer expense, to modify local regulations and processes in order to comply with dictates from the Commission. While we cannot be sure that Commission action has had any measurable effect on broadband deployment, we can be sure that its actions have increased costs to American taxpayers. As described in more detail in the National Associations' Comments, it is more likely than not that

[39] GN Docket No. 11-16, released June 22, 2011; para. 24, pp. 19-20, notes 101-103.

Commission actions have had no more than negligible impacts.

IX. POSSIBLE ACTIONS TO ADDRESS CURRENT AREAS OF CONCERN

The Commission asks a number of questions regarding possible actions that it might take to address areas of concerns. It describes a variety of voluntary actions, and raises the possibility of formal Commission regulations.[40]

It is not the intent of the Local Governments to respond in detail to each of the Commission's questions in this portion of the NOI. Rather, the Local Governments agree with and adopt the arguments made by the National Associations in their Comments, and urge the Commission to consider those Comments carefully. The Local Governments generally believe that the voluntary actions suggested by the Commission can be helpful, if done in cooperation with affected stakeholders (including local governments). We do not believe that the Commission has the legal authority to impose the kinds of regulations it describes in NOI Section III.B.2.

The Commission could certainly act as a facilitator to compile educational materials about ROW and wireless facilities siting practices. It could use the Commission's website as a vehicle to give providers, governmental entities and citizens links to a wide range of educational resources.

The Commission should not, however, insert itself into these issues as the federal agency with the expertise *to provide* the specific education. Such an action would be inappropriate for at least two reasons. First, the educational materials are already available and accessible if one knows where to find them. We urge the Commission to carefully consider the Comments of the National Associations, which describe these materials in detail. Second, the Commission does not have, and cannot effectively develop, the expertise to provide such education. Whether the issues

[40] NOI at paras. 36-44 and 45-49.

are different soil types and compaction standards when repairing street cuts, local historical properties and their impact on siting, setting bond amounts to provide sufficient coverage in case of damage based upon local economic conditions, or a host of other issues, the Commission will never be in the position to provide expertise in these areas.

Moreover, if the Commission considers a role of facilitating making available the resources offered by others, such actions are likely to be time consuming and costly. Is the Commission willing to dedicate staff resources to develop, maintain and promote a data base of information? Is the Commission willing to develop *and maintain* internal processes that institutionalize its obtaining local government technical expertise upon which the Commission will rely? The Commission's apparent willingness to disregard its own recommendation in the National Broadband Plan to create a Rights of Way Task Force[41] and to instead seek recommendations on ROW issues from its Technical Advisory Committee (which is industry-heavy in its membership and devoid of local government representation), suggests that the Commission fails to walk the talk when it comes to recognizing local government expertise and authority.[42] The Commission should use this NOI to clearly and unequivocally change course, and demonstrate *by action* that it both recognizes and respects local expertise and local authority.

The Commission also asks whether it should become involved in working to increase uniformity in ROW and wireless facilities siting governance among localities and/or within the federal government.[43] It questions whether it could develop partnerships with affected stakeholders, develop a model application processes or other procedures or practices, to lower

[41] NBP Recommendation 6.6.
[42] An additional example of the Commission's failure to demonstrate a commitment to local expertise is letting the Intergovernmental Advisory Committee linger for almost two years between the time that its charter was extended and the time that the Commission will actually appoint its members.
[43] NOI at para. 39.

costs and streamline processes across multiple jurisdictions. We strongly encourage the Commission to refrain from this activity.

As noted in the Comments of the National Associations, there are a variety of resources that already exist, developed by entities that unlike the Commission are already experts in this area. As we have stated in these Comments, a number of our Local Governments have worked cooperatively on developing regional and standardized applications, processes and procedures. What works in one region will not necessarily work in another region. While we believe that streamlined and regional standardization is beneficial where appropriate (as determined by the local jurisdictions themselves), such standardization has not, in our experience, resulted in additional broadband deployment that would not have occurred but for the regional model. As we have noted multiple times, these facts demonstrate that local regulatory processes, while a cost of doing business, do not rise to a level of having any measureable impact on where and how broadband is deployed.

For the reasons noted above, the Local Governments are wary of Commission inquiries into developing "partnerships." One way for the Commission to build the trust necessary to be a true partner with local governments seeking to promote broadband deployment is to refrain from suggesting any federal intrusions on local authority in the name of promoting broadband deployment, without a concomitant commitment to enforce a *quid pro quo* on the industry in return for Commission action. Without such a *quid pro quo*, the Commission's actions (as well as state preemption of local government authority) have had no more than negligible impact on broadband deployment. If the facts were otherwise, the Commission could point to higher levels of broadband deployment, better customer service, faster speeds and lower prices in states like Colorado, which preempted local authority over ROW charges in 1996. Clearly, these ROW

restrictions and elimination of costs that can be imposed on the telecommunications industry have done nothing more than increase cash flow for the private sector.

The Local Governments would also discourage the Commission's idea about initiating a "race to the top" type of competition.[44] The race to the top program in education awards significant financial resources to the winners. When the Commission asks what kinds of incentives would encourage participation by localities and states in a race to the top competition, the Local Governments suggest that such a competition would only encourage local participation if the winner were able to receive the financial resources to deploy broadband infrastructure, or alternatively, a guaranty from a private provider of faster speeds and lower prices. It is unlikely the Commission could offer either.

X. CONCLUSION

The Local Governments appreciate the Commission's need to better understand the practices and policies surrounding local governments' management of the public ROW and the siting of wireless communications facilities. We strongly urge the Commission to consider our Comments, as well as those submitted by the National Associations and communities across the country, before taking any action adverse to local government authority. The Commission also must resist moving forward in any other contexts to act on any of the issues raised in the NOI until the record in this proceeding is complete.

[44] NOI at para. 41.

Respectfully submitted,

THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF TACOMA AND SEATTLE, AND KING COUNTY, WASHINGTON, AND THE COLORADO MUNICIPAL LEAGUE

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July 2011, I served a true and correct copy of the foregoing **COMMENTS OF THE GREATER METRO TELECOMMUNICATIONS CONSORTIUM, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF TACOMA AND SEATTLE, AND KING COUNTY, WASHINGTON AND THE COLORADO MUNICIPAL LEAGUE** addressed to the following and in the manner specified:

VIA ELECTRONIC MAIL

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